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MICHAEL RODAK, JR., CLE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-891

ANNA MAE BRYANT, Administratrix, Etc., et al.,
Petitioners,

v.

INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA; DISTRICT NO. 23, UNITED MINE WORKERS OF AMERICA; W. A. BOYLE, PRESIDENT OF INTERNATIONAL UNION, UNITED MINE WORKERS OF AMERICA,
Respondents.

On Petition for a Writ of Certiori to the United States Court of Appeals for the Third Circuit

BRIEF OF RESPONDENTS IN OPPOSITION

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Respondents, International Union, United Mine Workers of America; District No. 23, United Mine Workers of America; and W. A. Boyle, President of International Union, United Mine Workers of America, hereinafter referred to as respondents, deny petitioners have asserted any ground or grounds to justify the granting of certiorari in this case.

OPINIONS BELOW

The District Court's opinion and order are unreported but are printed in Appendix "A" to the petition. The Sixth Circuit's opinion is unreported but is printed in Appendix "B" to the petition.

JURISDICTION

The United States District Court for the Western District of Kentucky entered judgment on a motion for summary judgment for the defendants in an action based on violation of the Labor Management Relations Act (Appendix "A" to petition). Petitioners' appeal to the Sixth Circuit Court of Appeals was denied and judgment was entered on September 26, 1972 (Appendix "B" to petition).

QUESTION PRESENTED

Whether the courts below, in their findings of fact and conclusions of law, were correct in finding that respondents did not breach any duty created by the collective bargaining agreement or by the obligation of fair representation, and were without liability to petitioners.

STATEMENT

Petitioners base their cause of action on Section 301 of the Labor Management Relations Act, 29 U.S.C. 185, claiming violation of a collective bargaining agreement between decedents' employer and the union of which they were members. Petitioners sued both the employer and the union in the court below. The Sixth Circuit found that language of the complaint could also be viewed as a suit for the union's breach of its duty of fair representation (Petition, pp. 19, 26). The Court held that no evidence showed respondents breached any duty created by the collective bargaining agree-

ment or any duty of fair representation. Respondents assert that both the District Court and the Sixth Circuit were correct in their findings of fact and conclusions of law based on the pleadings, depositions, answers to interrogatories, affidavits and other material contained in the record.

The District Court rejected plaintiffs' claims and granted summary judgment in favor of both the coal company and the union. Plaintiffs have accepted the District Court's decision with respect to the coal company and on appeal contested only that part of the District Court's judgment as denied them relief against the union.

Petitioners' petition states (p. 2) that the question presented is whether a labor union can be liable for wrongful death of a member as a result of negligent performance of its obligation to enforce a union contract. Respondents respectfully submit that petitioners have incorrectly stated the question presented as found by the Sixth Circuit in its opinion. Petitioners, in the Sixth Circuit and in the District Court, urged that their action was based on a collective bargaining agreement. Thus, it is submitted that the question noted in appellees' brief in the Sixth Circuit is the correct question, and it reads as follows:

> "By incorporating the Federal Mine Safety Code, did the Agreement create a cause of action in favor of appellants against the appellees or a basis for recovery in addition to compensation benefits?"

The District Court and the Sixth Circuit answered correctly in the negative and held that petitioners had failed to present an alleged cause of action arising out of a breach of contract against respondents. It is submitted the decision of the Sixth Circuit clearly shows

the reasons why petitioners failed to state a cause of action or show that one existed. The Sixth Circuit did not disregard Rule 56 of the Federal Rules of Civil Procedure concerning reasonable inferences in regard to motion for summary judgment. Petitioners basically failed to state a cause of action and dismissal of their complaint by the Sixth Circuit is compatible with applicable law and national labor policy. Further, the Sixth Circuit's decision does not show any undue consideration for labor unions and the observation of petitioners in that regard certainly does not show a basis in law or in fact for granting the writ it seeks herein.

Since each of the findings had the concurrence of the Sixth Circuit's affirming opinion and the district court, this Court should reject the invitation to review the instant case, implementing its rule that "We do not grant a certiorari to review evidence and discuss specific facts". *United States* v. *Johnston*, 268 U.S. 200, 227.

Petitioners seek to impose a burden upon collective bargaining representatives that would do great violence to national labor policy.

CONCLUSION

For the reasons herein discussed, UMWA submits that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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